

Message Text

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PAGE 01 CANBER 05631 01 OF 02 210813Z

21

ACTION IO-10

INFO OCT-01 AF-06 ARA-06 EA-07 EUR-12 NEA-10 ISO-00

CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03 NSAE-00 NSC-05

PA-01 PRS-01 SP-02 SS-15 USIA-06 JUSE-00 DHA-02 ORM-01

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R 210704Z AUG 75

FM AMEMBASSY CANBERRA

TO SECSTATE WASHDC 6432

INFO AMCONSUL MELBOURNE

AMCONSUL SYDNEY

USUN NEW YORK 756

USMISSION GENEVA

AMEMBASSY THE HAGUE

AMEMBASSY STOCKHOLM

LIMITED OFFICIAL USE SECTION 1 OF 2 CANBERRA 5631

EO 11652: N/A

TAGS: PFOR, UN, SHUM

SUBJ: FIFTH UN CONGRESS ON PREVENTION OF CRIME AND THE TREATMENT
OF OFFENDERS, GENEVA, SEPTEMBER 1975 - PROBLEM OF TORTURE

REF: STATE 184613

1. SUMMARY: GOA INTERESTED IN US INITIATIVE ON TORTURE DESCRIBED
IN REFTEL AND REQUESTED USG VIEWS ON DRAFT AUSTRALIAN RESOLUTION
ON APPLICABILITY OF SMR TO ALL PERSONS DEPRIVED OF THEIR LIBERTY
BY ARREST AND DETENTION AS WELL AS US VIEWS ON AUSTRALIAN REDRAFT
OF SWEDISH DUTCH RESOLUTION ON TURTURE. END SUMMARY.

2. IN DISCUSSION WITH EMBOFF AUG 21 OFFICIALS OF DFA AND THE
ATTORNEY GENERAL'S OFFICE SAID THEY WERE IN GENERAL AGREEMENT WITH
USG PROPOSAL OUTLINED REFTEL. THE ONLY DIFFERENCE WAS ON HOW TO
PROCEED. GOA TENDED TO FAVOR A FORMAL DECLARATION ON THE QUESTION
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PAGE 02 CANBER 05631 01 OF 02 210813Z

OF TORTURE ON THE GROUNDS THAT THIS WOULD TEND TO SET AN

INTERNATIONAL STANDARD EVEN IF IT WERE NOT QUICKLY ADOPTED BY ALL STATES. GOA ALSO WONDERED HOW WORK ON THIS SUBJECT WOULD PROCEED NOTING THAT THE QUESTION WAS AN IMPORTANT HUMAN RIGHTS ISSUE. GOA WAS NOT SURE WHETHER THE EXISTING WORKING GROUP WHICH DREW UP THE SMR SHOULD CONTINUE TO WORK ON THIS ISSUE OR WHETHER THE FIFTH UN CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS SHOULD ASK THE COMMISSION ON HUMAN RIGHTS TO REACTIVATE A STUDY OF THE PROBLEM.

3. TEXT OF AUSTRALIAN DRAFT RESOLUTION IS AS FOLLOWS:

QTE. RESOLUTION PROPOSED BY AUSTRALIA CONCERNING THE APPLICABILITY OF THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS TO ALL PERSONS DEPRIVED OF THEIR LIBERTY BY ARREST OR DETENTION

QTE. THE FIFTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS,

QTE. HAVING NOTED THE REQUEST OF THE GENERAL ASSEMBLY IN PARAGRAPH 4 OF RESOLUTION 3218 (XXIX) OF 6 NOVEMBER 1974 THAT THE CONGRESS INCLUDE IN THE ELABORATION OF THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS, RULES FOR THE PROTECTION OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AND TO REPORT THEREON TO THE GENERAL ASSEMBLY AT ITS THIRTIETH SESSION,

QTE. RECALLING THE VIEW OF THE MAJORITY OF PARTICIPANTS TO THE FOURTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS, AS RECORDED IN THE REPORT PREPARED BY THE SECRETARIAT, THAT THE STANDARD MINIMUM RULES SHOULD BE APPLICABLE TO ANY PERSON DEPRIVED OF HIS FREEDOM REGARDLESS OF WHETHER A CRIMINAL CHARGE HAS BEEN LODGED AGAINST HIM,

QTE. BEING OF THE VIEW THAT THE APPLICATION OF THE STANDARD MINIMUM RULES TO ALL PERSONS WHO HAVE BEEN DEPRIVED OF THEIR LIBERTY BY ARREST OR DETENTION SHOULD BE PLACED BEYOND DOUBT, 1. DECIDES THAT THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS SHOULD APPLY TO ALL PERSONS WHO HAVE BEEN DEPRIVED OF THEIR LIBERTY BY ARREST OR DETENTION FOR ANY CAUSE WHETHER OR NOT LIMITED OFFICIAL USE

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PAGE 03 CANBER 05631 01 OF 02 210813Z

THEY HAVE BEEN CHARGED WITH, OR CONVICTED OF, AN OFFENCE, AND ACCORDINGLY AMENDS THE RULES AS FOLLOWS:

(A) BY ADDING TO PARAGRAPH (1) OF RULE 4 THE WORDS INNER QTE AND PERSONS WHO HAVE BEEN DEPRIVED OF THEIR LIBERTY BY ARREST OR DETENTION FOR ANY CAUSE WHETHER OR NOT THEY HAVE BEEN CHARGED WITH, OR CONVICTED OF, AN OFFENCE END INNER QTE; AND

(B) BY INSERTING AFTER THE WORD INNER QTE SENTENCED END INNER QTE
IN PARAGRAPH (1) OF THE RULE; OR THE WORDS INNER QTE OR WHO
ARE DEPRIVED OF THEIR LIBERTY BY ARREST OR DETENTION FOR ANY CAUSE
AND HAVE NOT BEEN CHARGED WITH, OR CONVICTED OF, AN OFFENCE.
END INNER QTE.

2. REQUESTS THE SECRETARY-GENERAL TO SUBMIT THE AMENDMENTS TO
THE RULES SET OUT ABOVE TO THE ECONOMIC AND SOCIAL COUNCIL FOR
APPROVAL.

3. FURTHER REQUESTS THE SECRETARY-GENERAL TO REPORT TO THE GENERAL
ASSEMBLY THAT THE AMENDMENTS TO THE RULES SET OUT ABOVE HAVE BEEN
ADOPTED BY THE CONGRESS. END QTE

4. TEXT OF AUSTRALIAN REDRAFT OF SWEDISH-DUTCH RESOLUTION
IS AS FOLLOWS:

QTE. DECLARATION ON THE PROTECTION OF ALL PERSONS FROM BEING
SUBJECTED TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREAT-
MENT OR PUNISHMENT

QTE. THE FIFTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS, SUPPORTING THE
REJECTION BY THE GENERAL ASSEMBLY, IN ITS RESOLUTIONS 3059 (XXVIII)
OF 2 NOVEMBER 1973 AND 3218 (XXIX) OF 6 NOVEMBER 1974, ON TORTURE
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

QTE. SHARING THE CONVICTION OF THE GENERAL ASSEMBLY THAT, BECAUSE
OF THE INCREASE IN THE NUMBER OF ALARMING REPORTS THAT TORTURE IS
BEING PRACTISED IN MANY COUNTRIES OF THE WORLD, FURTHER AND
SUSTAINED EFFORTS ARE NECESSARY TO PROTECT UNDER ALL CIRCUMSTANCES
THE BASIC HUMAN RIGHT NOT TO BE SUBJECTED TO TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.
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PAGE 04 CANBER 05631 01 OF 02 210813Z

QTE. NOTING THE DECISION OF THE GENERAL ASSEMBLY TO CONSIDER AT
ITS THIRTIETH SESSION THE QUESTION OF TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN RELATION TO
DETENTION AND IMPRISONMENT .

QTE. RECOMMENDS THE GENERAL ASSEMBLY TO ADOPT THE FOLLOWING
DECLARATION ON THE PROTECTION OF ALL PERSONS FROM BEING SUBJECTED
TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT; THE GENERAL ASSEMBLY,

QTE CONSIDERING THAT, IN ACCORDANCE WITH THE PRINCIPLES PROCLAIMED
IN THE CHARTER OF THE UNITED NATIONS, RECOGNITION OF THE INHERENT
DIGNITY AND OF THE EQUAL AND INALIENABLE RIGHTS OF ALL MEMBERS
OF THE HUMAN FAMILY IS THE FOUNDATION OF FREEDOM, JUSTICE AND PEACE

IN THE WORLD.

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PAGE 01 CANBER 05631 02 OF 02 210823Z

21

ACTION IO-10

INFO OCT-01 AF-06 ARA-06 EA-07 EUR-12 NEA-10 ISO-00

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LIMITED OFFICIAL USE SECTION 2 OF 2 CANBERRA 5631

QTE CONSIDERING THAT THESE RIGHTS DERIVE FROM THE INHERENT
DIGNITY OF THE HUMAN PERSON.

QTE CONSIDERING ALSO THE OBLIGATION OF STATES UNDER THE CHARTER
OF THE UNITED NATIONS TO PROMOTE UNIVERSAL RESPECT FOR, AND
OBSERVANCE OF, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

QTE. HAVING REGARD TO ARTICLE 5 OF THE UNIVERSAL DECLARATION OF
HUMAN RIGHTS AND ARTICLE 7 OF THE INTERNATIONAL COVENANT ON CIVIL
AND POLITICAL RIGHTS, BOTH OF WHICH PROVIDE THAT NO ONE WILL BE
SUBJECTED TO TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT.

QTE. ADOPTS THIS DECLARATION ON THE PROTECTION OF ALL PERSONS FROM
BEING SUBJECTED TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT AS A COMMON STANDARD FOR ALL STATES AND

OTHER ENTITIES EXERCISING EFFECTIVE POWER.
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PAGE 02 CANBER 05631 02 OF 02 210823Z

ARTICLE 1

QTE. FOR THE PURPOSE OF THIS DECLARATION, TORTURE MEANS ANY ACT BY WHICH SEVERE PAIN OR SUFFERING, WHETHER PHYSICAL OR MENTAL, IS DELIBERATELY INFLICTED ON A PERSON: -

(1) FOR THE PURPOSE OF OBTAINING FROM HIM OR A THIRD PERSON INFORMATION OR CONFESSIONS,

(2) FOR THE PURPOSE OF PUNISHING HIM FOR AN ACT THAT HE HAS COMMITTED OR IS SUSPECTED OF HAVING COMMITTED,

(3) FOR THE PURPOSE OF INDUCING A PERSON TO DO AN ACT OR REFRAIN FROM DOING AN ACT,

(4) FOR THE PURPOSE OF INDUCING A PERSON TO RENOUNCE OPINIONS OR BELIEFS OR EXPRESS AGREEMENT WITH OPINIONS OR BELIEFS,

(5) BY REASON OF A PERSON'S OPINIONS OR BELIEFS, OR

(6) FOR ANY MALICIOUS PURPOSE.

ARTICLE 2

QTE. ANY ACT OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IS AN OFFENCE TO HUMAN DIGNITY AND SHALL BE CONDEMNED AS A DENIAL OF THE PRINCIPLES ENSHRINED IN THE CHARTER OF THE UNITED NATIONS AND CONDEMNED AS A VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOM PROCLAIMED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

ARTICLE 3

QTE. NO STATE MAY ALLOW OR TOLERATE TORTURE OR OTHER CRUEL, INHUMAN TREATMENT OR PUNISHMENT. EXCEPTIONAL CIRCUMSTANCES SUCH AS A STATE OF WAR OF A THREAT OF WAR, INTERNAL POLITICAL INSTABILITY OR ANY OTHER PUBLIC EMERGENCY MAY NOT BE INVOKED AS A JUSTIFICATION OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

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PAGE 03 CANBER 05631 02 OF 02 210823Z

ARTICLE 4

QTE. EACH STATE SHALL, IN ACCORDANCE WITH THE PRIVISIONS OF THIS DECLARATION, TAKE EFFECTIVE MEASURES WITHIN ITS JURISDICTION TO PREVENT TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT FROM BEING PRACTISED.

ARTICLE 5

QTE. THE PROHIBITION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT SHALL BE GIVEN PARTICULAR ATTENTION IN THE TRAINING OF THE POLICE AND LAW ENFORCEMENT PERSONNEL AND OF OTHER PUBLIC OFFICIALS WHO MAY BE RESPONSIBLE FOR DETAINEES. THE PROHIBITION SHALL ALSO, WHERE APPROPRIATE, BE INCLUDED IN GENERAL RULES OR INSTRUCTIONS ISSUED IN REGARD TO THE DUTIES AND FUNCTIONS OF THE STAFF OF INSTITUTIONS WHERE DETAINEES ARE KEPT.

ARTICLE 6

QTE. EACH STATE SHALL CONTINUOUSLY KEEP UNDER REVIEW INTERROGATION METHODS AND THE TREATMENT OF DETAINEES IN ITS TERRITORY, WITH A VIEW TO PREVENTING TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

ARTICLE 7

QTE. EACH STATE SHALL ENSURE THAT AN ACT OF TORTURE AS DEFINED IN ARTICLE 1 IS A PUNISHABLE OFFENCE UNDER ITS LAW, WHETHER THE OFFENDER PERPETRATOR IS A PUBLIC OFFICIAL OR A PRIVATE INDIVIDUAL. ACTS WHICH CONSTITUTE PARTICIPATION, COMPLICITY IN, OR INCITEMENT TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ARE ALSO PUNISHABLE OFFENCES.

ARTICLES 8 AND 9

QTE. WHENEVER THERE ARE REASONABLE GROUNDS TO BELIEVE THAT AN ACT OF TORTURE AS DEFINED IN ARTICLE 1 HAS BEEN COMMITTED OR A PERSON ALLEGES THAT HE HAS BEEN SUBJECTED TO TORTURE THE COMPETENT AUTHORITIES OF THE STATE CONCERNED SHALL PROCEED TO AN IMPARTIAL LIMITED OFFICIAL USE

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PAGE 04 CANBER 05631 02 OF 02 210823Z

INVESTIGATION.

QTE. IF THE REASONABLE GROUNDS OR ALLEGATIONS ARE SUBSTANTIATED CRIMINAL PROCEEDINGS SHALL BE INSTITUTED AGAINST THE OFFENDER OR OFFENDERS.

ARTICLE 10

QTE. WHERE IT IS PROVED THAT AN ACT OF TORTURE OR OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT HAS BEEN COMMITTED
THE PERSON AGGRIEVED SHALL BE AFFORDED REDRESS AND COMPENSATION
IN ACCORDANCE WITH NATIONAL LAW.

ARTICLE 11

QTE. ANY STATEMENT WHICH A PERSON HAS MADE AS A RESULT OF TORTURE OR
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT BEING
USED AGAINST HIM MAY NOT BE INVOKED AS EVIDENCE AGAINST HIM IN
ANY PROCEEDINGS.

ARTICLE 12

QTE. ALL STATES SHALL CO-OPERATE IN IMPLEMENTING THIS DECLARATION.
WHERE APPROPRIATE, REGIONAL BODIES MAY BE SET UP FOR THE PURPOSE
OF ASSISTING STATES IN ELABORATING RULES OR STANDARDS FOR INVEST-
IGATING CASES OF ALLEGED VIOLATIONS OF THE PRINCIPLES OF THIS DE-
CLARATION. END QTE.
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